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6 *Attorney for Plaintiff Patricia Sloan*

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF ARIZONA**

9
10 Patricia Sloan,

11 Plaintiff,

12 v.

13 Life Insurance Company of North America;
14 Trustee of the Group Insurance Trust for
Employers in the Services Industry; Trustee of the
15 Group Insurance Trust for Employers in the
Services Industry Disability Plan; Taipei
16 American School; Taipei American School
Foundation; Taipei American School Foundation
17 Disability Plan,

18 Defendants.

Case No.

COMPLAINT

19
20 Now comes the Plaintiff Patricia Sloan (hereinafter referred to as “Plaintiff”), by and
21 through her attorney, Scott E. Davis, and complaining against the Defendants, she states:

22 ***Jurisdiction***

23 1. Jurisdiction of the court is based upon the Employee Retirement Income
24 Security Act of 1974 (ERISA); and in particular, 29 U.S.C. §§1132(e)(1) and 1132(f).
25 Those provisions give the district courts jurisdiction to hear civil actions brought to recover
26 employee benefits. In addition, this action may be brought before this Court pursuant to 28

1 U.S.C. §1331, which gives the Court jurisdiction over actions that arise under the laws of
2 the United States.

3 *Parties*

4 2. At all times relevant to this action, Plaintiff was a resident of Maricopa
5 County, Arizona.

6 3. Upon information and belief, Defendant Taipei American School (hereinafter
7 referred to as the “Company”) participated in an entity known as the Trustee of the Group
8 Insurance Trust for Employers in the Service Industry (hereinafter referred to as the
9 “Insurance Trust”), which sponsored, administered and purchased a group long-term
10 disability insurance policy (hereinafter referred to as the “Policy”) which was fully insured
11 by Life Insurance Company of North America (hereinafter referred to as “LINA”). The
12 specific group disability policy is known as Group Policy No.: 00716D. Pursuant to an
13 April 11, 2017 letter from LINA, Group Policy No. 00716D may have also been
14 administered under Group Policy No. NHD 0911111. The Company’s purpose in
15 participating in the Insurance Trust was to provide disability insurance for its employees.

16 4. Upon information and belief, the Company is operated by an entity known as
17 the Taipei American School Foundation (hereinafter referred to as the “Foundation”).

18 5. Upon information and belief, the Policy may have been included in and part
19 of an employee benefit plan, specifically named the Trustee of the Group Insurance Trust
20 for Employers in the Services Industry Disability Plan/Taipei American School
21 Foundation Disability Plan (hereinafter referred to as the “Plan”) which may have been
22 created to provide the Company’s employees with welfare benefits. At all times relevant
23 hereto, the Plan constituted an “employee welfare benefit plan” as defined by 29 U.S.C.
24 §1002(1).

25 6. Upon information and belief, LINA functioned as the claim administrator of
26 the Policy. However, pursuant to the relevant ERISA regulation, the Company, Insurance

1 Trust, Foundation and/or the Plan may not have made a proper delegation or properly vested
2 fiduciary authority or power for claim administration in LINA.

3 7. LINA operated under a financial conflict of interest in evaluating Plaintiff's
4 long-term disability claim due to the fact that it operated in dual roles as the decision maker
5 with regard to whether Plaintiff was disabled, as well as the payor of benefits.

6 8. LINA's conflict of interest existed in that if it found Plaintiff was disabled, it
7 was then financially liable for the payment of her disability benefits.

8 9. The Company, Insurance Trust, LINA, Foundation and the Plan conduct
9 business within Maricopa County and all events giving rise to this Complaint occurred
10 within Arizona.

11 ***Venue***

12 10. Venue is proper in this district pursuant to 29 U.S.C. §1132(e)(2) and 28
13 U.S.C. §1391.

14 ***Nature of the Complaint***

15 11. Incident to her employment, Plaintiff was a covered employee pursuant to
16 the Plan and the relevant Policy and a "participant" as defined by 29 U.S.C. §1002(7).
17 Plaintiff seeks disability income benefits from the Plan and the relevant Policy pursuant to
18 §502(a)(1)(B) of ERISA, 29 U.S.C. §1132(a)(1)(B), as well as any other non-disability
19 employee benefits she may be entitled to from the Plan, Insurance Trust, Foundation, any
20 other Company Plan and/or the Company as a result of being found disabled in this action.

21 12. After working for the Company as a loyal employee in the position of a
22 Teacher, Plaintiff became disabled from working in any occupation on or about March 29,
23 2014, and has remained continuously disabled since that date due to serious medical
24 conditions.

1 13. Following the onset of her disability, Plaintiff filed a claim for long-term
2 disability benefits under the relevant Policy which was administered by LINA. LINA made
3 every decision in Plaintiff's long-term disability claim.

4 14. Upon information and belief, the relevant LINA Policy and definitions of
5 disability governing Plaintiff's long-term disability claim are as follows:

6 “You are considered Disabled if, solely because of Injury or Sickness,
7 you are:

- 8 1. Unable to perform the material duties of your Regular
9 Occupation; and
10 2. Unable to earn 80% or more of your Indexed Earnings from
working in your Regular Occupation.

11 After Disability Benefits have been paid for 24 months, you are
12 considered Disabled if, solely due to Injury or Sickness, you are:

- 13 1. Unable to perform the material duties of any occupation for
14 which you are, or may reasonable become, qualified based on
education, training or experience; and
15 2. Unable to earn 60% or more of your Indexed Earnings.”

16 15. In support of her claim for long-term disability benefits, Plaintiff submitted to
17 LINA medical evidence which supported her allegation that she met any definition of
18 disability as defined in the relevant Policy.

19 16. LINA approved Plaintiff's long-term disability claim and paid her disability
20 benefits for the 24 month “Regular Occupation” period, or through June 26, 2016.
21 Following a review to determine whether Plaintiff met the “Any Occupation” definition of
22 disability in the LTD Policy, LINA terminated Plaintiff's disability claim and benefits
23 without any medical documentation to support its allegation that Plaintiff's medical
24 conditions had improved in such a way that she could return to an occupation where she
25 could earn at least 60% of her Indexed Earnings as defined in the Policy.
26

1 17. In a letter dated December 23, 2015, LINA informed Plaintiff it was
2 terminating her long-term disability benefits beyond June 26, 2016.

3 18. Pursuant to 29 U.S.C. §1133, Plaintiff timely appealed LINA's December 23,
4 2015 termination of her benefits and submitted additional medical, vocational and lay-
5 witness evidence supporting her appeal and her allegation that she is disabled and meets any
6 definition of disability in the Policy.

7 19. Plaintiff submitted to LINA a July 1, 2016 narrative letter authored by her
8 board certified treating physician who opined, "I have reviewed [LINA's] definition of
9 disability from "any occupation" and believe since March 2014 [Plaintiff] has been unable
10 to work in any occupation and will continue to be indefinitely."

11 20. Further supporting her claim, Plaintiff submitted a July 1, 2016 medical
12 questionnaire completed by the same board certified treating physician, who confirmed she
13 would miss work "75% or more" of the time, due to her medical conditions, if she were
14 employed in a full-time job.

15 21. Plaintiff also submitted to LINA a Functional Capacity Evaluation report
16 dated April 27, 2016, wherein after an extensive several hour evaluation, a qualified
17 physical therapist concluded, "...[Plaintiff] would be physically unable to perform a job
18 description at the sedentary work level on a full-time basis." (Original emphasis).

19 22. Further supporting her claim, Plaintiff submitted a vocational report from a
20 certified vocational expert dated August 18, 2016, who after interviewing Plaintiff and
21 reviewing the aforementioned evidence, along with the "Any Occupation" definition of
22 disability set forth in the Policy concluded, "[Plaintiff] cannot earn 60% percent of her
23 income as she is unable to work and she would not be able to perform a job in which she
24 would earn at least 60% of her previous income because she is unable to sustain any gainful
25 work."
26

1 23. Plaintiff also submitted updated medical records from each of her treating
2 providers and a list of her current medications, as well as the side effects they cause and the
3 impact they have on her ability to work in any occupation or in any work environment.

4 24. Plaintiff also submitted to LINA three (3) sworn affidavits authored by
5 herself, her husband and her daughter, who all confirmed she is unable to work in any
6 occupation and that her conditions had not improved in any meaningful way since the date
7 she originally became disabled.

8 25. LINA entered into the Regulatory Settlement Agreement (“RSA”) with
9 essentially every State, including the Arizona Department of Insurance on June 11, 2013
10 (the RSA is attached as Exhibit “A” to this Complaint). Plaintiff reminded LINA of this
11 agreement and its claim responsibilities by submitting a copy of the agreement to LINA
12 during the administrative review of her long-term disability claim.

13 26. The RSA resulted from a multistate examination of LINA’s disability
14 claims practices which led to regulatory concerns, a corrective action plan with
15 regulatory monitoring of LINA by governmental agencies in LINA’s evaluation of its
16 disability claims, which includes similarly situated insureds such as the Plaintiff.

17 27. As part of the RSA, LINA agreed to pay \$925,000 in fines to the participating
18 state regulatory agencies.

19 28. As part of the RSA, LINA agreed to collectively pay 5 different states’
20 regulatory agencies hundreds of thousands of dollars for claims monitoring.

21 29. The terms of the RSA apply to Plaintiff’s claim and the terms of the RSA are
22 relevant in this action as it relates to whether LINA complied with those terms in its review
23 of her claim.

24 30. Plaintiff alleges that LINA’s review of her long-term disability claim failed
25 to fully comply with the terms of the RSA which precluded a full and fair review.
26

1 Plaintiff is entitled to discovery with regard to LINA's efforts to comply with the terms
2 of the RSA during its review and decision making in disability claims.

3 31. As part of its review of Plaintiff's claim for long-term disability benefits,
4 LINA obtained two (2) medical records only "paper reviews" of Plaintiff's claim from two
5 physicians of its choosing. LINA did not disclose to Plaintiff, either during the
6 administrative review of her claim or following its February 7, 2017 denial of her claim, the
7 names or reports authored by the physicians who reviewed her claim.

8 32. Upon information and belief, Plaintiff alleges the reviewing physicians may
9 be long time medical consultants for LINA and/or the disability insurance industry. As a
10 result, Plaintiff alleges the reviewing physicians may have incentives to protect their own
11 consulting relationships with LINA and/or the disability insurance industry by providing
12 medical records only "paper reviews," which selectively review or ignore evidence such as
13 occurred in Plaintiff's claim, in order to provide opinions and report(s) which are favorable
14 to disability insurance companies and that are relied upon to deny claims.

15 33. In letters dated October 7, 2016, December 14, 2016 and January 11, 2017, in
16 order to engage LINA in a dialogue so she could perfect any alleged deficiencies in her
17 claim, Plaintiff requested a complete copy of any and all medical records only "paper
18 reviews" from LINA and the opportunity for her and her treating physicians to respond to
19 the reviews prior to LINA rendering a decision in her claim.

20 34. Prior to rendering its February 7, 2017 denial in Plaintiff's claim, LINA
21 unlawfully refused to honor Plaintiff's request and never shared with her, or her treating
22 medical professionals who opined she was disabled, the medical records only "paper
23 reviews" authored by the physicians who reviewed her claim so they could respond to the
24 reports and perfect Plaintiff's claim.

25 35. LINA's failure to provide Plaintiff and her treating medical professionals with
26 the opportunity to respond to the reviewing physicians' reports is an ERISA procedural

1 violation, and it precluded LINA from conducting a full and fair review pursuant to ERISA.
2 LINA's actions also violated Ninth Circuit case law as the Court held in *Salomaa v. Honda*
3 *Long Term Disability Plan*, 642 F.3d 666, 680 (9th Cir. 2011):

4 "The plan evidently based its denial in large part on review of Salomaa's file by two
5 physicians, one for the first denial, *another for the final denial*. They both wrote
6 their appraisals for the plan administrator. Yet the plan failed to furnish their letters
7 to Salomaa or his lawyer. The regulation, quoted above, requires an ERISA plan to
furnish 'all documents, records, and other information relevant for benefits to the
claimant.' *A physician's evaluation provided to the plan administrator falls squarely*
within this disclosure requirement" (emphasis added).

8
9 36. In a letter dated February 7, 2017, notwithstanding Plaintiff's aforementioned
10 evidence which proved she met any definition of disability in the Policy, LINA notified her
11 it had denied her claim for long-term disability benefits.

12 37. In its denial letter dated February 7, 2017, LINA notified Plaintiff she had
13 exhausted her mandatory administrative levels of review and that she could file a civil
14 action lawsuit in federal court pursuant to ERISA.

15 38. LINA's February 7, 2017 denial letter is clear evidence that it violated the
16 terms of the RSA, breached its fiduciary duty and failed to provide a full and fair review,
17 while in the process of also committing ERISA procedural violations that were specifically
18 enacted to protect individuals such as the Plaintiff.

19 39. LINA's ERISA violations include but are not limited to, completely failing to
20 credit, reference, consider, and/or selectively reviewing and de-emphasizing most, if not all
21 of Plaintiff's reliable evidence which proved that she met the definition of disability in the
22 Policy, and failing to provide its medical reviewers' reports prior to issuing its February 7,
23 2017 denial and during a time when it mattered.

1 40. In evaluating Plaintiff's claim on appeal, LINA owed her a fiduciary duty and
2 it had an obligation pursuant to ERISA to administer it, "solely in [her] best interests and
3 other participants" which it failed to do.¹

4 41. LINA failed to adequately investigate and failed to engage Plaintiff in a
5 dialogue during the appeal of her claim with regard to what evidence was necessary so
6 Plaintiff could perfect her appeal in order to prove that she is disabled as that term is defined
7 in the Policy. LINA's failure to investigate the claim and to engage in this dialogue, and to
8 ask for and/or obtain the evidence it believed was necessary and critical to perfect Plaintiff's
9 claim is an ERISA procedural violation, it also violates Ninth Circuit case law and is
10 evidence she did not receive a full and fair review.

11 42. Plaintiff asserts LINA provided an unlawful review which was neither full
12 nor fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, and the terms of
13 the RSA, by failing to have Plaintiff's claim reviewed by truly independent medical
14 professionals; by failing to credit Plaintiff's reliable evidence; by failing to obtain an
15 Independent Medical Examination when the Policy allowed for one, or a Functional
16 Capacity Evaluation, which raises legitimate questions about the thoroughness and accuracy
17 of its review and denials; by failing to credit Plaintiff's reliable evidence; by providing
18 biased and one sided reviews of Plaintiff's claim that failed to consider all the evidence
19 submitted by her and/or by de-emphasizing medical evidence which supported Plaintiff's
20 claim; by disregarding Plaintiff's subjective and self-reported complaint/symptoms; by

21
22 ¹ It sets forth a special standard of care upon a plan administrator, namely, that the
23 administrator "discharge [its] duties" in respect to discretionary claims processing "solely
24 in the interests of the participants and beneficiaries" of the plan, § 1104(a)(1); it
25 simultaneously underscores the particular importance of accurate claims processing by
26 insisting that administrators "provide a 'full and fair review' of claim denials," *Firestone*,
489 U.S., at 113, 109 S. Ct. 948, 103 L. Ed. 2d 80 (quoting § 1133(2)); and it
supplements marketplace and regulatory controls with judicial review of individual claim
denials, see § 1132(a)(1)(B). *Metro. Life Ins. Co. v. Glenn*, 128 S. Ct. 2343, 2350 (U.S.
2008).

1 failing to consider all of her medical conditions and the work limitations set forth in her
2 medical evidence as well as the impact the combination of these medical conditions and
3 limitations have on her ability to work in any occupation; by failing to engage Plaintiff in a
4 dialogue so she could respond to the reviewing physicians' reports by submitting the
5 necessary evidence to perfect her claim so she could prove that she is "disabled" as that
6 term is defined in the Policy, and by failing to consider the impact the side effects from
7 Plaintiff's medications would have on her ability to engage in any occupation.

8 43. Plaintiff asserts a reason LINA provided an unlawful review which was
9 neither full nor fair and that violated ERISA, specifically, 29 U.S.C. § 2560.503-1, is due to
10 its conflict of interest that manifested as a result of the dual roles LINA undertook as the
11 decision maker and the payor of benefits. LINA's conflict of interest provided it with a
12 financial incentive to deny Plaintiff's claim.

13 44. LINA's conflict of interest manifested in that when it denied Plaintiff's claim,
14 it saved a significant amount of money.

15 45. Plaintiff is entitled to discovery regarding LINA's aforementioned conflicts of
16 interest. Plaintiff is also entitled to discovery regarding the conflicts of interest of any third
17 party vendor hired by LINA, who then retained a reviewing medical professional in
18 Plaintiff's claim, and of *any* individual who reviewed her medical evidence or claim.

19 46. The Court may properly weigh and consider extrinsic evidence regarding the
20 nature, extent and effect of *any* conflict of interest and/or any ERISA procedural violation
21 and/or RSA violation which may have impacted or influenced LINA's decision to deny
22 her claim.

23 47. The standard of review for this Court to apply is *de novo* as the LINA Policy
24 does not contain discretionary language.

25 48. In denying her claim, Plaintiff alleges LINA failed to provide a full and fair
26 review pursuant to ERISA, and that its denial of her claim is a *de novo* wrong decision.

1 49. If the Court concludes the Policy confers discretion and the standard of
2 review is for abuse of discretion, Plaintiff alleges that LINA's decision which resulted from
3 its unlawful ERISA violations as referenced herein, constitutes an abuse of discretion.
4 Plaintiff also alleges that in denying her claim, LINA did not provide a full and fair review
5 as required by law and its violations of ERISA are so flagrant they justify *de novo* review.

6 50. As a direct result of LINA's decision to deny Plaintiff's disability claim, she
7 has been injured and suffered damages in the form of lost long-term disability benefits in
8 addition to other potential non-disability employee benefits she may be entitled to receive
9 through or from the Plan, Insurance Trust, Foundation, from any other Company Plan
10 and/or the Company as a result of being found disabled. Plaintiff believes that other
11 potential non-disability employee benefits may include but not be limited to, health and
12 other insurance related coverage or benefits, retirement benefits or a pension, life insurance
13 coverage and/or the waiver of the premium on a life insurance policy providing coverage for
14 her and her family/dependents.

15 51. Pursuant to 29 U.S.C. §1132, Plaintiff is entitled to recover unpaid
16 disability and non-disability employee benefits, prejudgment interest, reasonable
17 attorney's fees and costs from Defendants.

18 52. Plaintiff is entitled to prejudgment interest at the legal rate pursuant to A.R.S.
19 §20-462, or at such other rate as is appropriate to compensate her for the losses she has
20 incurred as a result of Defendants' nonpayment of benefits.

21 WHEREFORE, Plaintiff prays for judgment as follows:

22 A. For an Order finding that the evidence in Plaintiff's claim is sufficient to
23 prove she met and continues to meet the "Any Occupation" definition of disability set
24 forth in the relevant Plan and/or Policy and that she is entitled to disability benefits, and
25 any other non-disability employee benefits she may be entitled to as a result of that
26

1 Order, from the date she was first denied these benefits through the date of judgment with
2 prejudgment interest thereon;

3 B. For an Order directing Defendants to continue paying Plaintiff the
4 aforementioned benefits until such a time as she meets the conditions for the termination of
5 benefits;

6 C. For attorney's fees and costs incurred as a result of prosecuting this suit
7 pursuant to 29 U.S.C. §1132(g); and

8 D. For such other and further relief as the Court deems just and proper.

9 DATED this 15th day of August, 2017.

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11 SCOTT E. DAVIS, P.C.

12 By: /s/ Scott E. Davis
13 Scott E. Davis
14 Attorney for Plaintiff
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